

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

HUGH H. MILLER,

Defendant and Appellant.

D043063

(Super. Ct. No. SCD175720)

APPEAL from a judgment of the Superior Court of San Diego County, William D. Mudd, Judge. Affirmed.

After the trial court denied his motion to suppress evidence (Pen. Code,¹ § 1538.5), Hugh H. Miller pleaded guilty to one count of possession of a firearm by a felon (§ 12021, subd. (a)(1)) and admitted a strike prior conviction (§ 667, subds. (b)-(i)). The court sentenced him to prison for 32 months. Miller contends the trial court erred in denying his motion to suppress. We affirm the judgment.

¹ All statutory references are to the Penal Code.

FACTS²

At about 1:30 a.m. on June 28, 2003, the police responded to a call of a fight involving several people at the American Legion. A security guard directed Sergeant Romeo de los Reyes to a brown Cadillac in the parking lot that had its engine running, telling de los Reyes, "Those people are involved, don't let them go." There were two people in the car: Miller sitting in the driver's seat and Patrick O'Neil (Patrick)³ (who used a wheelchair) in the passenger seat. De Los Reyes recognized Patrick and knew he was a gang member who carried guns. Given the circumstances, de los Reyes wanted to "make a safe contact."

Sergeant de los Reyes approached Miller and ordered him to turn off the car's engine and get out of the car. As Miller was getting out of the car, de los Reyes ordered Miller to put his hands on the car, but Miller instead put his hands in his pockets and said, "I don't have anything." At that point, Officer Kearns arrived and, because he was a subordinate officer to Sergeant de los Reyes, he took over the contact while de los Reyes

² We state the facts in the light most favorable to the judgment, as we are required by the rules of appellate review. (*People v. Bolin* (1998) 18 Cal.4th 297, 331; see also *People v. Carpenter* (1999) 21 Cal.4th 1016, 1046 ["[a]n order is presumed correct; all intendments are indulged in to support it on matters as to which the record is silent, and error must be affirmatively shown'"].) We recognize conflicting facts were presented and the court indicated that even if it had chosen to believe some of the facts in Miller's favor, it would have issued the same ruling.

³ Officer Todd Kearns testified Patrick's surname was Evans while Sergeant de los Reyes testified Patrick's surname was O'Neil. Due to our uncertainty as to Patrick's surname, we use only his first name.

watched. Officer Kearns was concerned about Miller's putting his hands in his pockets and because, in his experience, people put their hands in their pockets when they have something to hide, Kearns asked Miller to remove his hands from his pockets. Miller complied. Kearns then conducted a patdown search of Miller and found a loaded gun in Miller's front left pants pocket.

DISCUSSION

I

Standard of Review

When reviewing a ruling on a motion to suppress evidence, we first determine whether the trial court's factual findings, express or implied, are supported by substantial evidence. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) We then exercise our independent judgment to determine whether, on the facts found by the court, the search or seizure was reasonable under the Fourth Amendment. (*Ibid.*) Where the admissibility of evidence is challenged for being the "fruit" of an unlawful search or seizure, federal constitutional standards govern our review under the California Constitution, article 1, section 28, subdivision (d). (*People v. Bradford* (1997) 15 Cal.4th 1229, 1291.) We cannot order the exclusion of evidence at trial as a remedy for an unreasonable search or seizure unless that remedy is required by the federal Constitution as interpreted by the United States Supreme Court. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 76.)

II

Detention

Miller contends his detention was unlawful because there was no reasonable suspicion he had committed a crime.

A detention occurs when the police show physical force or authority or restrain a person's liberty in some way. (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 789-790.) Detentions are strictly limited in duration, scope and purpose and are justified if the police have an " 'articulable suspicion that a person has committed or is about to commit a crime.' " (*Id.* at p. 784.) Detentions are examined under the Fourth Amendment's reasonableness standard. (*People v. Souza* (1994) 9 Cal.4th 224, 229.)

Here, the officers were investigating a call about a fight involving several people at the American Legion. Through talking with the security guard, they had reason to believe that Miller and/or his passenger were involved in the fight.⁴ Thus, they had reasonable suspicion Miller may have been involved in the commission of a crime and his detention was proper.

⁴ We note there was a conflict in the evidence. Both officers testified the American Legion security guard pointed to Miller's car and indicated Miller and his passenger were involved in the fight. The security guard testified he identified only that Patrick was involved. Even assuming the security guard told de los Reyes that only Patrick was involved in the fight, the officers would have been justified in detaining Miller. The officers responded to a fight involving several people, so it was reasonable for de los Reyes to investigate whether Miller, who was with Patrick, may have been involved in the fight as well.

III

Patdown Search

Miller contends the patdown search was not supported by a reasonable belief or suspicion that he was armed.

After a detention, a police officer may undertake a patdown search for officer safety if the officer believes the suspect is armed and dangerous. (*Terry v. Ohio* (1968) 392 U.S. 1, 27.) The sole justification of the search is the protection of the officer and others nearby. (*Id.* at p. 29.) In order to search for weapons, the officer must be able to point to specific and articulable facts, together with rational inferences from those facts, that reasonably support a suspicion that the suspect is armed and dangerous. (*Id.* at p. 21.) "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his [or her] safety or that of others was in danger." (*Id.* at p. 27.)

Here, Sergeant de los Reyes and the other officers were in the process of investigating a violent confrontation late at night in a dark parking lot. Sergeant de los Reyes initiated the contact with Miller. From past experience, de los Reyes knew Miller's passenger was a documented gang member and carried firearms. The information from the security guard indicated Miller might have been involved in the fight at the American Legion. Officer Kearns also noted Miller was wearing baggy pants that could conceal a weapon. Given these circumstances, the officers were justified in entertaining a reasonable concern for their safety and in conducting a patdown search for weapons.

Miller contends that while Sergeant de los Reyes may have been justified in patting him down if he had a reasonable suspicion that Patrick was in possession of a gun, Officer Kearns was not justified in doing so because he was neither aware of any facts or inferences that Patrick had a history of gun possession nor directed by de los Reyes to conduct the patdown. The record, however, shows the initial contact was by de los Reyes and the patdown search was conducted under his supervision. Kearns testified that, as a matter of departmental policy, patrol officers such as himself, rather than sergeants, conduct patdowns. The evidence supports an inference de los Reyes implicitly directed Kearns to conduct the patdown search, that is, to continue the contact initiated by de los Reyes.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

McDONALD, J.

McINTYRE, J.